IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Misc. Writ Petition No. 2230 (S/S) of 2001

Gangi Lal & another .Petitioners

Versus

The District Magistrate, Chamoli
& others .Respondents

Hon'ble M.M. Ghidiyal, J.

Heard Sri V. B. S. Negi learned counsel for the petitioners and learned Standing Counsel for the respondents.

By means of this writ petition the petitioners have challenged the order dated 31.03.2000 passed by District Magistrate, Chamoli rejecting the representation of the petitioners.

The brief facts of the case are that an advertisement was issued by the District Magistrate, Chamoli on 23.06.1998 for appointment on the post of Seasonal Assistant Wasil Baqi Navis in the pay scale of 3050-4500.

The petitioners have applied in pursuance of advertisement dated 23.06.1998. After completing written test, typing test and interview the petitioners were appointed on the post of Seasonal Assistant Wasil Baqi Navis vide order dated 11.09.1998.

In pursuance with the appointment letter, the petitioner joined their duties on 17.09.1998. Since there were posts of Junior Clerk vacant in the District Office, the petitioners made representation for regularization of their services in the District Office of Chamoli. The District Magistrate was satisfied with the services of the petitioners and he regularized the petitioners on the post of Junior Clerk vide order dated 25.10.1999. On the basis of the order dated 25.10.1999, the petitioners were working on the post of Ahalmad. On. 31.03.2000 the respondents passed another order canceling regularization of the petitioners on the post of Ahalmad without giving any reason and

without giving any opportunity of hearing to them. The petitioners filed writ petition no. 17433 of 2000 before the Allahabad High Court challenging the order dated 31.03.2000 and the High Court on 22.04.2000 finally disposed of the writ petition with the following directions:-

> *"After hearing Mr. A.B. Singh, learned counsel for the petitioners and the learned Standing Counsel the writ petition is disposed of with direction to the respondent concerned to consider the case of the petitioner in the light of the decision in the case of Swaraswati & others Vs. State of U.P. & others (1999 UPLBEC 1234)provided the petitioners are so eligible and entitled in law and fulfills the eligibility criteria and are still working and they are seasonal employees and that there is a scheme for their being so considered according to their seniority, within a period of six months from today. If there is any vacancy in that event the petitioners may be accommodated in its subject to the decision in the representation that might be filed by the petitioners within a period of three weeks from today.*
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> *The impugned order shall remain suspended during the said period of six month till the decision which ever is earlier. The continuation of the petitioners in the post shall not entitled them to claim any right on the basis of such continuation in terms of this order. if the petitioners continue, then the interim order will be subject to the result of the decision and shall continue till the decision or six months, whichever is earlier."*

In pursuance to this order of Allahabad High Court dated 22.04.2000, the respondents have decided the representation of the petitioners vide order dated 31.07.2000 rejecting the representation of the petitioners. The respondents while rejecting the representation of the petitioners have taken a ground that in view of the judgment of the High Court in the case of Swaraswati & others Vs. State of U.P. &

others (1999 UPLBEC 1234) the petitioners are not entitled for regularization on the post of Junior Clerk.

Learned counsel for the petitioner has submitted that the respondent has wrongly interpreted the judgment of the High Court and the Rules known as the U.P. District Offices (Collectorate) Ministerial Services Rule 1980 and has submitted that the post of Ahalmad and Seasonal Assistant Wasil Baqi Navis comes in the category ‘A’. The petitioner has not claimed for the post of Clerk which is mentioned in the category ‘B’, ‘C’ or ‘D’. he has claimed regularization on the post of Junior Clerk which is categorized in the category ‘A’ and since both the posts if Seasonal Assistant Wasil Baqi Navis and Ahalmad falls in category ‘A’, the petitioners were rightly regularized on the post of Ahalmad.

I find force in the submission of learned counsel for the petitioner. Learned Standing Counsel was granted time to file counter affidavit but no counter affidavit has been filed so far.

Learned Standing Counsel has informed the court that on 15.04.2004 fax message was sent to the District Magistrate which was received on 17.04.2004 informing them that the court has allowed 10 days time and no more time to file counter affidavit. However, no counter affidavit is filed by the respondents.

I find force in the submission of the learned counsel for the petitioner that since the post of Assistant Clerk as well as Ahalmad fall in the category of ‘A’, therefore, the respondents have wrongly interpreted the provisions of the Rules and wrongly rejected the representation of the petitioner.

For the reasons stated above the order dated 31.07.2000 is hereby quashed. The writ petition is allowed, no order as to costs.

Sd/-

11.05.2004
ASWAL